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CRIMINAL LAW

WINTER 2019

COURSE BOOK

Vol II

PROF. VINCENT CHIAO

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UNIVERSITY OF TORONTO

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University of Toronto – Faculty of Law
Criminal Law – Winter 2019
Prof. Vincent Chiao

Course location & time. Mondays, Wednesdays and Thursdays, 3:40-5, J140

Course description. This course examines the basic concepts of the criminal law through sustained attention on an array of common offenses. We will also consider inchoate and group crimes, procedural issues and the impact of the Charter on the substantive criminal law.

Materials. There is no assigned casebook for the course. All the readings will be posted to the course website.

Office hours. I have an open door policy: you should feel free to drop in at your convenience. Of course, I am also happy to schedule an appointment; my email address is vincent.chiao@utoronto.ca. My office is Jackman 332.

Evaluation. Final exam (80%), court visit (10%) and participation (10%).

Court visit. You should plan on visiting a criminal court in the GTA (a list of courts, addresses and hours will be distributed separately), and to write a brief (no more than 300 words) reflection upon your visit. This summary is due by no later than **Monday, April 1.**

Statement regarding mental health: It is not uncommon for university students to experience a range of health and mental health issues that may result in barriers to achieving their academic goals. The Faculty of Law and the University of Toronto offer a wide range of services that may be of assistance. You are encouraged to seek out these resources early and often.

At the law school: Contact Assistant Dean Alexis Archbold at alexis.archbold@utoronto.ca; the Manager, Academic/Personal Counselling and Wellness, Yukimi Henry at Yukimi.henry@utoronto.ca ; and consult the law school's Health and Wellness webpages http://www.law.utoronto.ca/student-life/personal-support/health-and-well-being

On Campus: Student Life Website: http://www.studentlife.utoronto.ca Health and Wellness Centre Website: http://www.studentlife.utoronto.ca/hwc

Off-Campus: Good2Talk - a post-secondary (24/7) helpline (1-866-925-5454).

University of Toronto – Faculty of Law
Criminal Law – Winter 2019
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Tentative syllabus – subject to revision as the course proceeds.

1. **Monday, January 7**
   - Introduction & course overview

2. **Wednesday, January 9**
   - Codification
     - *Frey v Fedoruk*, [1950] SCR 517
     - *R v Amato*, [1982] 2 SCR 418
     - AW Mewett, "The Criminal Law, 1867-1967"

3. **Thursday, January 10**
   - Federalism
     - *Reference re: Dairy Industry Act (Canada)*, [1949] SCR 1
     - *Bedard v Dawson*, [1923] SCR 681
     - *Switzman v Elbling*, [1957] SCR 285
     - M Friedland et al, "Criminal Justice and the Division of Power in Canada"

4. **Monday, January 14**
   - Federalism, cont'd
     - *R v Wetmore*, [1983] 2 SCR 284
   - Homicide
     - *R v Simpson*, (1981) 58 CCC (2d) 122
     - *R v Fontaine*, 2002 MBCA 107

5. **Wednesday, January 16**
   - Homicide, cont'd
     - *R v Cooper*, [1993] 1 SCR 146
     - *R v Paré*, [1987] 2 SCR 618
     - *R v Russell*, 2001 SCC 53
     - Law Reform Commission of Canada – "Recodifying Criminal Law"
     - English Law Commission – "The Mental Element in Crime"
     - MPC §2.02

6. **Thursday, January 17**
   - 2nd degree murder – s.229(c)
     - *R v Serné*, 16 Cox Crim Cas 311 (1887)
     - *R v Vasil*, [1981] 1 SCR 469
     - *R v Vaillancourt*, [1987] 2 SCR 636

7. **Monday, January 21**
   - 2nd degree murder, cont'd
     - *R v Martineau*, [1990] 2 SCR 633
     - *R v Shand*, (2011) 266 CCC (3d) 137
     - MPC §210
   - Manslaughter
     - *R v Tutton & Tutton*, [1989] 1 SCR 1392

8. **Wednesday, January 23**
   - Manslaughter, cont'd
     - *R v DeSousa*, [1992] 2 SCR 944
     - *R v Creighton*, [1993] 3 SCR 34
   - Causation
     - *R v Winning*, (1973) 12 CCC (2d) 449
     - *R v Smithers*, [1978] 1 SCR 506

9. **Thursday, January 24**
   - Causation
     - *R v Harbottle*, [1993] 3 SCR 306
     - *R v Nette*, 2001 SCC 78
     - *R v Roberts*, [1971] 56 Cr App R 95
     - *R v Blaue*, (1975) 61 Cr App R 271

10. **Monday, January 28**
    - Causation, cont'd
      - *Pagett v the Queen*, (1983) 76 Cr App R 279
      - *R v Maybin*, 2012 SCC 24

11. **Wednesday, January 30**
    - Omissions
      - *People v Beardsley*, 150 Mich 206 (1907)
      - *R v Thornton*, [1993] 2 SCR 445
      - *R v Browne*, (1997) 116 CCC (3d) 183
      - Some duty to rescue statutes

12. **Thursday, January 31**
    - Assault
      - *R v Cey*, (1989) 48 CCC (3d) 480
      - *R v LeClerc*, (1991) 67 CCC (3d) 563
      - MPC §211

13. **Monday, February 4**
    - Assault, cont'd
      - *R v Jobidon*, [1991] 2 SCR 714
      - *R v Brown*, [1994] 1 AC 212

14. Wednesday, February 6

- Sexual assault
  - MPC §213
  - *R v Chase*, [1987] 2 SCR 293
  - *R v Pappajohn*, [1980] 2 SCR 120
  - *R v Sansregret*, [1985] 1 SCR 570

15. Thursday, February 7

- Sexual assault, cont'd
  - *R v Ewanchuk*, [1999] 1 SCR 330
  - *R v Darrach*, (1998) 122 CCC (3d) 225
  - *R v JA*, 2011 SCC 28

16. Monday, February 11

- Sexual assault, cont'd
  - *R v Cuerrier*, [1998] 2 SCR 371
  - *R v Mabior*, 2012 SCC 47
  - Statute drafting exercise

17. Wednesday, February 13

- Property offenses – theft
  - *R v Howson*, (1966) 3 CCC 348
  - *R v Hemmerly*, (1976) 30 CCC (2d) 141
  - *R v Dorosh*, 2003 SKCA 134
  - *R v Stewart*, [1988] 1 SCR 963

18. Thursday, February 14

- Property offenses – theft, cont'd
  - *R v Maurer*, 2014 SKPC 118
  - Kadish, Schulhofer and Steiker, *Criminal Law and Its Processes*, 8th edition, pp.996-999, 1002-1003

19. Monday, February 25

- Property offenses – fraud
  - *R v Théroux*, [1993] 2 SCR 5
  - *R v Zlatic*, [1993] 2 SCR 29

20. Wednesday, February 27

- Catch up

21. Thursday, February 28

- Attempts
  - *R v Cline*, [1956] OR 539
  - *R v Deutsch*, [1986] 2 SCR 2

- *R v Ancio*, [1984] 1 SCR 225
- *R v Sorrell*, 41 CCC (2d) 9 (OCA)
- MPC §5.01

22. Monday, March 4

- Attempts, cont'd
  - *Haughton v Smith*, [1975] AC 476
  - *United States v Dynar*, [1997] 2 SCR 462

23. Wednesday, March 6

- Complicity – aiding & abetting
  - *Wilcox v Jeffery*, [1951] 1 All ER 464
  - *R v Kulbacki*, (1966) 1 CCC 167
  - *R v Thatcher*, [1987] 1 SCR 652
  - *R v O'Brien*, 2007 NSCA 3
  - MPC §2.06

24. Thursday, March 7

- Complicity – aiding & abetting, cont'd
  - *R v Hibbert*, [1995] 2 SCR 973
  - *R v Greyeyes*, [1997] 2 SCR 825
  - *R v Dunlop & Sylvester*, [1979] 2 SCR 881
  - *R v Briscoe*, 2010 SCC 13

25. Monday, March 11

- Complicity – conspiracy & related doctrines
  - *Interstate Circuit v United States*, 306 US 208 (1939)
  - *People v Lauria*, 251 Cal App 2d 471 (1967)
  - *Atlantic Sugar v Canada*, [1980] 2 SCR 644
  - This American Life podcast, "The Fix Is In"

26. Wednesday, March 13 – no class

27. Thursday, March 14

- Complicity – conspiracy & related doctrines, cont'd
  - *R v Cotroni*, [1979] 2 SCR 256
  - *R v Lamontagne*, (1999) 142 CCC (3d) 561
  - *R v Logan*, [1990] 2 SCR 731
  - *R v Kirkness*, [1990] 3 SCR 74
  - *R v Gauthier*, 2013 SCC 32
  - MPC §§5.02-3

28. Monday, March 18

- Complicity – further issues
  - *R v Hamilton*, 2005 SCC 47

- *R v Déry*, 2006 SCC 53
- *R v JF*, [2013] 1 SCR 565

29. Wednesday, March 20

- Entrapment
  - *R v Mack*, [1988] 2 SCR 903
  - *R v Barnes*, [1991] 1 SCR 449

30. Thursday, March 21

- Strict & absolute liability
  - *R v Beaver*, [1957] SCR 531
  - *R v Pierce Fisheries Limited*, [1971] SCR 5
  - *R v Sault Ste Marie*, [1978] 2 SCR 1299

31. Monday, March 25

- Strict & absolute liability, cont'd
  - *Reference re s.94(2) of Motor Vehicle Act (British Columbia)*, [1985] 2 SCR 486
  - *R v Wholesale Travel Group Inc.*, [1991] 3 SCR 154

32. Wednesday, March 27

- Mistake of law/mistake of fact
  - MPC §2.04
  - *R v Pontes*, [1995] 3 SCR 44
  - *R v Jorgensen*, [1995] 4 SCR 55
  - *Québec v Souveraine, compagnie d'assurance générale*, 2013 SCC 63
  - *R v MacDonald*, [2014] 1 SCR 37

33. Thursday, March 28

- Mental disorder
  - *R v Cooper*, [1980] 1 SCR 1149
  - *R v Abbey*, [1982] 2 SCR 24
  - *R v Chaulk*, [1990] 3 SCR 1303

34. Monday, April 1

- Mental disorder, cont'd
  - *R v Swain*, [1991] 1 SCR 933
  - *R v Oomen*, [1994] 2 SCR 507
  - *Winko v Forensic Psychiatric Institute*, [1999] 2 SCR 625
  - *R v Bouchard-Lebrun*, 2011 SCC 58
- Court visit reflections due

35. Wednesday, April 3

- Guest lecture: Justice Hogan, Ontario Court of Justice

36. Thursday, April 4

- Discussion of court visit
  - M Feeley, *The Process is the Punishment*, ch. 6

37. Monday, April 8

- Sentencing
  - *R v Willaert* (1953), 105 CCC 172 (Ont CA)
  - *R v CAM*, [1996] 1 SCR
  - A Mewett and S Nakatsuru, *An Introduction to the Criminal Process in Canada*, chapter 18
  - Manson, Healy, Trotter, Roberts and Ives, *Sentencing and Penal Policy in Canada*, 2nd edition, pp.78-115

38. Wednesday, April 10

- Sentencing, cont'd
  - Minnesota Sentencing Grid
  - Coroners & Justice Act 2009, ss. 118-132
  - England & Wales Sentencing Council, Theft Offences Definitive Guideline (skim)

39. Thursday, April 11

- Sentencing, cont'd
  - *R v Klair* (2004), 186 CCC (3d) 285
  - *R v Smith*, [1987] 1 SCR 1045
  - *R v Nur*, [2015] 1 SCR 773
  - *R v Anthony-Cook*, [2016] 2 SCR 204
- Wrap up